

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:01 CR 276 (CFD)
JEFFREY S. ROBINSON	:	

RULING ON MOTION TO SUPPRESS

The defendant, Jeffrey S. Robinson, was indicted by a federal grand jury on November 27, 2001, for unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g). On February 14, 2002, the defendant filed a motion to suppress the evidence of a pair of boots and a video camera that were obtained from a warrantless search of 175 Broad Street, Apt. 2, Groton, Connecticut. An evidentiary hearing on the motion was held on May 1, 2002. For the following reasons, the motion to suppress [Doc. # 14] is DENIED.

I. Standard

As a general rule, a criminal defendant who seeks to suppress evidence bears the burden of proof. See United States v. Galante, 547 F.2d 733, 738 (2d Cir. 1976), cert. denied, 431 U.S. 969 (1977). A defendant seeking to suppress evidence based on a search or seizure must first establish standing, i.e., an expectation of privacy, by a preponderance of the evidence. See U.S. v. Osorio, 949 F.2d 38, 40 (2d Cir. 1991). Next, the defendant must establish a basis for his motion to suppress, such as an initial showing that the search was conducted without a warrant, and then the burden of proof shifts to the government to show that the warrantless search falls within one of the recognized exceptions to the warrant requirement. See United States v. Sacco, 563 F.2d 552, 558 (2d Cir. 1977), cert. denied, 434 U.S. 1039 (1977). If the government relies

on consent to the search, as is the case here, the government must demonstrate by a preponderance of the evidence that the consent was voluntary. See U.S. v. Buettner-Janusch, 646 F.2d 759, 764 (2d Cir. 1981).

II. Findings of Fact

The Court makes the following findings of fact based on the evidence presented at the hearing on the motion to suppress.

On August 15, 2001, Officer Jad Bickford of the Groton Police Department responded to a report of a burglary at a home occupied by James and Denise Grey at 171 Broad Street in Groton, Connecticut. As a result of the investigation, the defendant Robinson was arrested later that day on a State of Connecticut burglary charge.¹ At the time of his state arrest, Robinson resided next door to the Greys at 175 Broad Street, Apartment 2, with his girlfriend Shaleighne McKiernan.

On August 16, 2001, Officer Bickford was dispatched to respond to a call from McKiernan to the police department, in which she reported that she had some items in her apartment that she believed were stolen and she wished to turn them over to the police.²

Officer Bickford arrived at the apartment of Robinson and McKiernan, knocked on the

¹The Government claims that the firearm which is the subject of the indictment in the instant case was taken from the Greys along with the boots and video camera during the course of the burglary by Robinson.

²Though McKiernan did not testify at the suppression hearing, her statements at the hearing, as recounted by Officer Bickford, were admitted because (1) the Court may consider hearsay evidence that may be inadmissible at trial in hearings on motions to suppress, see U.S. v. Matlock, 415 U.S. 164, 172 (1974), (2) the testimony by Officer Bickford as to such statements was reliable and credible, and (3) the statements were corroborated by McKiernan's sworn statement to the Groton police department, Gov.'s Exh. B.

door, and with McKiernan's permission, but without a warrant, entered the residence. Officer Bickford then entered the kitchen area of the apartment and was directed by McKiernan to a closet off the kitchen. McKiernan told Officer Bickford that the items she believed were stolen were located in that closet and that she wanted Officer Bickford to remove them. There were no markings on the closet door indicating that the door should not be opened or that it contained private items, nor did the closet door contain a lock.

Officer Bickford entered the closet, was directed by McKiernan to a pair of boots and a video camera on a shelf in the closet, and seized those items. Officer Bickford then left the apartment with the boots and video camera and placed them on top of the trunk of his vehicle, which was parked outside. He then took a written statement from McKiernan. In her statement, McKiernan stated that Robinson had called her from jail the previous evening, told her that the books and video camera were in the closet, and told her to "get rid of them." While taking McKiernan's statement, Officer Bickford was approached by Mr. Grey who stated that the boots and video camera were his and were taken during the burglary.

III. Conclusions of Law

The Fourth Amendment to the U.S. Constitution provides that "[t]he right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." U.S. Const. amend IV. Subject to several well-established exceptions, the Fourth Amendment requires governmental officials to obtain a search warrant in order to conduct a search or seizure. See e.g., McCardle v. Haddad, 131 F.3d 43, 47 (2d Cir. 1997) (listing

exceptions to warrant requirement).

A. Expectation of Privacy

A threshold question raised by the Government is whether Robinson has standing to challenge the search and seizure of the boots and video camera. Where a Fourth Amendment violation is claimed, a defendant seeking to have evidence suppressed must have “standing” to challenge the search or seizure, i.e., a reasonable expectation of privacy in the location or items searched. See Rakas v. Illinois, 439 U.S. 128, 143 (1978). “For an individual’s expectation of privacy to be legitimate, he must have exhibited an actual (subjective) expectation of privacy and the expectation must be one that society is prepared to recognize as reasonable.” U.S. v. Reyes, 283 F.3d 446, 457 (2d Cir. 2002) (internal quotation marks omitted). The touchstone of a reasonable expectation of privacy is some property or possessory interest in the area or item searched. Rakas, 439 U.S. at 142-43.

Citing United States v. Haqq, 278 F.3d 44 (2d Cir. 2002), the Government argues that the Court must determine whether Robinson had a legitimate expectation of privacy *in the items seized* through the warrantless search of his home in order to establish standing. The Government argues that (1) Robinson has not produced any evidence that he had a possessory or property interest in the boots and video camera, and (2) even assuming that he had such an interest, Robinson abandoned that interest when he instructed McKiernan to dispose of the boots and video camera the night before the search.

The relevant facts of Haqq are as follows: In February 2000, two New York City police officers went to arrest Haqq, who was the subject of several outstanding arrest warrants, at the two-bedroom apartment where Haqq lived with at least four other individuals. When the officers

arrived at the apartment, they knocked on the door and identified themselves. After a few minutes, one of the residents of the apartment opened the door. The officers entered, handcuffed the resident and Haqq, and conducted a protective sweep of the premises. As part of the protective sweep, one of the officers entered the back bedroom of the apartment, where he observed a suitcase on top of the bed in the center of the room. The officer searched the suitcase and discovered three guns. Haqq was subsequently charged with possessing those firearms after having been convicted of a felony. Haqq moved to suppress the guns, contending that the search of the suitcase was unlawful.

Though testimony at the hearing on the motion to suppress revealed that Haqq did not reside in the back bedroom and the suitcase did not belong to him, the District Court held that Haqq's reasonable expectation of privacy in his home was violated by the seizure of objects within that home though not in "plain view." The Government appealed, contending that Haqq's Fourth Amendment rights were not violated because he had not demonstrated that he had a reasonable expectation of privacy in the suitcase.

The Second Circuit vacated the suppression order and remanded for a finding on whether Haqq had a reasonable expectation of privacy in the suitcase, holding that the District Court erred in "treat[ing] the search of the suitcase *in* Haqq's home as part of the search *of* his home." Haqq, 278 F.3d at 48. As in Arizona v. Hicks, 480 U.S. 321 (1987), the relevant search in Haqq was the search of an object, not the search of a home where the object was found. See Haqq, 278 F.3d at 48-49. Thus, the Second Circuit held that the District Court erred in holding that a defendant's Fourth Amendment rights are violated by a search of an object within that home following the lawful entry into that home and the room where the object was located, without

finding that the defendant had a reasonable expectation of privacy in the particular object searched, the suitcase. See id. at 51. Rather, the Second Circuit held, “when considering the legality of a search of an object within a home, courts [must] focus[] on the defendant’s expectation of privacy in *the object* apart from his expectation of privacy in the home.” Id. at 50.

There are at least two significant differences between the instant case and Haqq with regard to the standing issue, however. First, the instant case does not involve the “search” of an object found within a home. Here, the boots and video camera were seized, but were not searched, as were the suitcase in Haqq and the stereo equipment in Hicks. The relevant search in the instant case was the search of a home, or more specifically, the search of a kitchen closet located within the common area of a shared apartment.³ The Second Circuit specifically noted that there was no suggestion in the record in Haqq that the warrantless entry of Haqq’s shared apartment or search of the back bedroom within that apartment were unlawful. See id. at 49 n.4 (comparing Alderman v. United States, 394 U.S. 165, 176-77 (1969)). The issue in Haqq, rather, was the propriety of the Government’s search of an object, found within that home, i.e., the search of the suitcase. See id. Similarly, in Hicks, at issue was the search of an “object” located within the defendant’s home—the search of stereo equipment for serial numbers—and the defendant in Hicks conceded that the entry and search of his home, although warrantless, were justified by exigent circumstances. See Hicks, 480 U.S. at 324-25.

When it is the search of a home that is at issue, rather than the search of an object within

³Moreover, to the extent the Government is arguing that the closet here was an “object” within a home for the purpose of the Haqq analysis, the Court disagrees. The Government has not pointed to, nor can the Court find, decisions indicating that a closet located within a common area of a home shared by two residents should be considered an “object” within that home, absent some other facts indicating a heightened privacy interest in the closet.

that home, “[o]nce standing in the premises searched is established, no further showing by a defendant is necessary concerning an expectation of privacy in particular items within the premises.” Mehler et al., *Federal Criminal Practice: A Second Circuit Handbook* (2001 ed.) 229 (citing Alderman, 394 U.S. at 176-80); see also U.S. v. Manbeck, 744 F.2d 360, 374 (4th Cir. 1984) (“The privacy interest that must be established to support standing is an interest in the area searched, not an interest in the items found.”). As the Supreme Court held in Alderman v. United States, a defendant may object to the introduction in evidence of items obtained through a warrantless search of his home regardless of whether that defendant had an expectation of privacy in the items seized. See Alderman, 394 U.S. at 176-80. In Alderman, the Supreme Court stated that a homeowner had standing to move to suppress the Government’s introduction of property belonging to another because it was the fruit of an unlawful warrantless search of his home. 394 U.S. at 176-77. “If the police make an unwarranted search of a house and seize tangible property belonging to third parties . . . the homeowner may object to its use against him, not because he had any interest in the seized items as ‘effects’ protected by the Fourth Amendment, but because they were the fruits of an unauthorized search of his house, which is itself expressly protected by the Fourth Amendment.” Id. Thus, the relevant inquiry here is whether Robinson had a legitimate expectation of privacy in his home and whether he had a legitimate expectation of privacy in the area of the home searched.⁴

Another distinction between the instant case and Haqq is that the area of Robinson’s home that was searched was not exclusively used by his roommate, as was the case in Haqq. Courts

⁴Accordingly, the Court declines to reach the Government’s argument that Robinson “abandoned” his property interest in the items seized when he instructed McKiernan to throw the items away.

have held that one who shares his home with another may not have a reasonable expectation of privacy in those areas of the home exclusively used by the roommate. See Haqq, 278 F.3d at 50 (citing Lenz v. Winburn, 51 F.3d 1540, 1549-50 (11th Cir. 1995) (grandparents lacked reasonable expectation of privacy in closet in their home used exclusively by granddaughter), and People v. Fleming, 345 N.E.2d 10, 14-15 (Ill. App. 3d 1975) (defendant lacked reasonable expectation of privacy in brother's bedroom of apartment shared by brother and defendant, where brother kept bedroom locked and kept key in his possession)). Here, the Court finds that the area of the home searched by Officer Bickford was not exclusively used by McKiernan or Robinson. The Government concedes that the closet was located in "a common area of the apartment." The Government also concedes that the closet door did not contain markings or locks indicating that it was under the sole control of either McKiernan or Robinson. Thus, the Court finds that Robinson had a reasonable expectation of privacy in the area of his apartment searched by Officer Bickford.

Accordingly, the Court concludes that Robinson has standing to challenge Officer Bickford's warrantless search.

B. Validity of Consent Search

The warrantless search was valid in light of McKiernan's consent, however. While "searches and seizures inside a home without a warrant are presumptively unreasonable," Payton v. New York, 445 U.S. 573, 586 (1980), "a warrantless entry and search are permissible if the authorities have obtained the voluntary consent of a person authorized to grant such consent." U.S. v. Elliott, 50 F.3d 180, 185 (2d Cir. 1995); see also Schneckcloth v. Bustamonte, 412 U.S. 218, 248-49 (1973). A third-party may validly consent to a search where "two prongs are present: first, the third party had access to the area searched, and second, either: (a) common

authority over the area; or (b) a substantial interest in the area; or (c) permission to gain access.” U.S. v. Davis, 967 F.2d 84, 87 (2d Cir. 1992). A “co-tenant” of a home is authorized to consent to a search by the police of the areas over which she exercises “common authority.” See United States v. Matlock, 415 U.S. 164, 170-71 (1974); Elliott, 50 F.3d at 185 (“Consent may be validly granted by the individual whose property is to be searched . . . or by a third party who possesses common authority over the premises.”). One who possesses common authority assumes the risk that a third-party might consent to a search of the property. See Frazier v. Cupp, 394 U.S. 731, 740 (1969).

Both McKiernan and Robinson resided at the apartment where the search was conducted. The kitchen and its closet were part of a common area of the apartment. Also, there were no markings on the closet indicating that the door should not be opened or that it contained private items, nor did the closet door contain a lock. Accordingly, the Court finds that McKiernan (1) had access to the kitchen and its closet and (2) exercised “common authority” over the kitchen and its closet. See Davis, 967 F.2d at 87; Matlock, 415 U.S. at 170-71 (defining common authority as “mutual use of the property by persons generally having joint access or control for most purposes”).

Additionally, the Court finds that the Government has demonstrated by a preponderance of the evidence that McKiernan’s consent was voluntary. Indeed, McKiernan called law enforcement authorities herself and reported that she had some items in her apartment that she believed were stolen and that she wished the authorities would remove them.⁵ Accordingly, the

⁵Moreover, even assuming that McKiernan did not have actual authority to consent to the search of the closet, the Court finds that Officer Bickford reasonably believed that McKiernan had such authority, and this reasonable belief is sufficient to justify the warrantless search. See Elliott,

Court finds that Officer Bickford's August 16, 2001 search and seizure were valid under the Fourth Amendment.

For the foregoing reasons, Robinson's motion to suppress [Doc. #14] is DENIED.

SO ORDERED this ____ day of June 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

50 F.3d at 195 (“[E]ven if the third party did not have the requisite relationship to the premises, and therefore lacked the authority to give a valid consent, official reliance on his consent may validate the search if it was reasonable for the officers to believe he had the requisite relationship.”).